EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CUSTOMER NO. 22927

Appellants:	Jay S. Walker, Jose A. Suarez, T. Scott Case, Michiko Kobayashi, Andrew P. Golden
Application No.:	09/605,818
Filed:	June 28, 2000
Title:	SYSTEM FOR UTILIZING REDEMPTION INFORMATION

Attorney Docket No.: 00-001

Group Art Unit:	3625
Examiner:	Mark A. Fadok

REPLY BRIEF

BOARD OF PATENT APPEALS
AND INTERFERENCES

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Appellants hereby submit remarks in this Reply Brief pursuant to 37 C.F.R. § 41.41 and in response to the Examiner's Answer mailed on June 15, 2006. This Reply Brief is submitted as a supplement to the Appeal Brief mailed on March 6, 2006 and should, if applicable, be considered as a request to maintain the current appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed September 13, 2005 (Part of Paper No./Mail Date 20050908), rejecting claims **1-11**, **38-42**, and **51-55**.

REMARKS

I. No New Grounds for Rejection

Appellants note that the Examiner has, in the Examiner's Answer mailed on June 15, 2006 (hereinafter the "Examiner's Answer"), removed the outstanding 35 U.S.C. §101 rejection and has not otherwise altered or added any grounds of rejection with respect to the claims being appealed. Accordingly, this Reply Brief is submitted voluntarily pursuant to 37 C.F.R. § 41.41.

II. Appellants' Invention

At pg. 7, first paragraph, of the Examiner's Answer, the Examiner characterizes "Appellants' invention" as being "essentially" as described therein by the Examiner. The Examiner goes on to state that the "invention" is not what is currently claimed by Appellants.

Appellants respectfully note that nowhere in Appellants' specification as filed nor anywhere in the history of prosecution of the present application has the "Appellants' invention" been described as being limited as suggested by the Examiner. While the Examiner may describe one possible embodiment, for example, many other embodiments are fully described, disclosed, and contemplated by Appellants' specification as filed.

Appellants note that support in the specification for all pending claims being appealed has been identified at pgs. 7-11 of Appellants' Appeal Brief filed on March 6, 2006 (hereinafter the "Appeal Brief"). All limitations of the pending claims being appealed are also believed to be clearly and distinctly pointed out and are believed to otherwise fully comply with the requirements of 35 U.S.C. §112. The Examiner has set forth no rejections nor made any allegations to the contrary.

III. Improper Official Notice / Personal Knowledge

After five (5) Office Actions and over three (3) years of examining the currently pending claims, the Examiner has, at this late date, *for the first time* provided an indication of a basis for the Examiner's use of Official Notice and/or Personal Knowledge used in rejecting the pending claims.

At pg. 6 of the Examiner's Answer, the Examiner indicates that the Examiner is a graduate of the Real Estate Institute and that the Examiner was a realtor during the early 1990's. The Examiner appears to provide this information in support of either what the Examiner believes was within the knowledge of one of ordinary skill in the art or in support of an assertion of Personal Knowledge.

As a preliminary matter, Appellants note that it is unclear whether the Examiner is relying on what is allegedly "well known" in the prior art or on a particular personal experience of the Examiner. In either case, Appellants respectfully submit that the rejections based on such assertions are improper.

If the §103(a) rejections are based on what is allegedly "well known" in the prior art, the rejections are improper because they are essentially based on "officially noted" subject matter that is unsupported by any documentary evidence. "It is **never** appropriate to rely **solely** on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.")." MPEP 2144.03; emphasis added.

Further, Appellants traverse what the Examiner appears to be taking Official Notice of, as Appellants do not agree that the Examiner's assertions are accurate. To the extent that the Examiner continues to rely on the matter which Examiner appears to be taking Official Notice of, Appellants respectfully request that Examiner provide documentation in support of such matter so that Appellants may adequately understand the meets and bounds of the Officially Noted matter and be better able to adequately respond thereto.

If, on the other hand, the Examiner is not taking Official Notice of what is well known in the art but is rather relying on the Examiner's own Personal Knowledge of Real Estate practices, **Appellants request, pursuant to 37 C.F.R. § 1.104(d)(2), that the Examiner provide an Affidavit** detailing the Examiner's Personal Knowledge and/or experiences relied upon in the rejections.

IV. Still No Motivation to Combine

At pg. 7, second paragraph, of the Examiner's Answer, the Examiner, in response to Appellants' arguments that no motivation to combine the references has been provided, appears to now rely solely upon "the paragraph from Lough cited on page 22 of appellant's [sic] brief."

In other words, the Examiner relies upon the statement in Lough that describes how the MLS may be utilized to show properties for sale within minutes of them becoming listed. Appellants are unable to comprehend the Examiner's logic on this point. How, for example, would the well-known MLS service for real estate motivate one to combine the references as suggested by the Examiner? The Examiner is silent as to any applicable reasoning, and merely points to the quoted paragraph to speak for itself.

The Examiner appears, however, to be misinterpreting the quoted paragraph of Lough. The Examiner appears, for example, to interpret the term "comparable sales" in the quoted paragraph to mean 'properties that have already sold'. A reading of the quoted paragraph, however, shows that this language instead refers to properties that are 'for sale' and that have just been listed. See, Appeal Brief, pg. 23, second paragraph.

The combination of the Examiner's failure to provide *any* reasoning with the Examiner's apparent misreading of the quoted paragraph of Lough fails to provide an adequate motivation to combine the references and therefore fails to establish a *prima facie* case for obviousness.

V. Features Recited by the Pending Claims

At pg. 7, last paragraph to pg. 8, first paragraph, of the Examiner's Answer, the Examiner, in response to Appellants' arguments that various claim limitations are not taught or suggested by the cited references, states that such limitations "are not recited in the rejected claim(s)."

Appellants respectfully note that every limitation presented in Section 4.4.1.1 of the Appeal Brief as not being taught or suggested by the pending claims is *quoted* from the pending claims. All such limitations are therefore necessarily and explicitly recited in the pending claims.

The Examiner appears to be confused by Appellants' arguments with respect to what the term "redemption" or the action of "redeeming" mean. Indeed, at pg. 8, first paragraph, of the Examiner's Answer, the Examiner states that "limitations from the specification are not read into the claims." Appellants respectfully note that the Examiner is miss-applying this tenant of Patent aw. As described in Section 4.4.1.1 of the Appeal Brief, for example, the Examiner simply continues to

read the term "redemption" out of the pending claims. Appellants' attempt to describe what the terms mean is not an importation of limitations from the specification into the claims. Instead, it is an attempt to show how the Examiner is misinterpreting the terms and limitations already recited within the pending claims, as **such terms must have meaning**.

VI. Conclusion

At least for the above-stated reasons, in supplement to those submitted and described in both the Appellants' Request for Pre-Appeal Brief Review (mailed on December 12, 2005) and the Appeal Brief, Appellants respectfully request that the Examiner's rejections of the pending claims be reversed.

Respectfully submitted,

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Date

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